Commission make any specific revision to its current rules until such time that there is sufficient experience under the provisions of Section 260 to determine whether such changes would be in the public interest."

Some parties, including VoiceTel, make the mistake of ignoring the existing *Computer III and ONA* nonstructural policies and safeguards that are directly relevant to implementing §260. The following are examples of this mistake.

Marketing of Voice Messaging Services -- VoiceTel (pp. 6-7) asserts that §260 "extends the prohibition against discrimination to the marketing of voice messaging services...and requires that the same customer service representative should not be permitted to market the LEC voice messaging services along with the other options that the telephone company currently offers its customers." Later in its Comments, VoiceTel (pp. 10-11) argues that §260 requires that the LEC market telemessaging services for its competitors if it markets its own telemessaging. These positions ignore the words and goals of the statute and the *Computer III and ONA* policies and safeguards. The section in question, §260(a)(2), states that a LEC that provides telemessaging service "shall not prefer or discriminate in favor of its telemessaging service operation in its provision of telecommunications services." (emphasis added) Thus, this section relates solely to nondiscriminatory provisioning of telecommunications services and does not affect the ILECs marketing of telemessaging services. By asserting otherwise, VoiceTel is trying to achieve structural separation that is both unnecessary and contrary to Congress's intent. Since Congress did not require a separate affiliate, it is obvious that Congress expected the ILEC to market its own telemessaging service. In *Computer III*, the Commission recognized that integrated marketing is the key to bringing new services to the mass market of consumers. The Commission developed CPNI rules, nondiscriminatory provisioning requirements, and other nonstructural safeguards to protect all parties' interests. Accordingly, VoiceTel's argument must be rejected.

Comparably Efficient Interconnection, Network Disclosure, and CPNI Requirements -- VoiceTel (p. 5) asserts, "If an incumbent LEC undertakes to reduce the costs of

interconnection for voice messaging services for itself, it must be willing to do the same for its competitors." VoiceTel (p. 5) adds that ILECs should be required to provide stutter dial tone as a message waiting indicator to other ESPs, if the ILECs provide it to their own enhanced service providers. CEI provisions already include these requirements, and VoiceTel does not provide any evidence of a need for additional requirements. Similarly, VoiceTel (p. 6) does not provide any evidence or indication that existing network disclosure requirements are not adequately addressing its concern that information about methods of interconnection be "made available on a timely basis to the LEC competitors." In fact, the current requirements are adequately addressing this concern. Finally, VoiceTel (p. 7) ignores CPNI requirements of §222 when it asserts that LEC contacts with basic service customers provide the LEC an unfair competitive advantage.

CEI End User Equal Access Requirements -- AT&T (n. 6) ignores Pacific Bell's and other LECs' compliance with CEI end user equal access requirements when it states: "It would be an obvious violation of Section 260, for example, for a group of LECs jointly to provide a voice messaging service for which those LECs have assigned the subscriber's basic telephone number to the LECs' enhanced voice messaging mailbox for their sole use to the exclusion of competing voice messaging providers, as some BOCs (Pacific Bell, Ameritech, Bell Atlantic and NYNEX) have apparently proposed to do as part of "The Messaging Alliance."

It is difficult to tell what AT&T is alluding to, but its point is incorrect. Voice mail end users choose the voice mail providers they wish to use, if any. The end user may assign his or her basic telephone number (*e.g.,* home phone number) to the chosen voice mail, or may ask the voice mail provider to assign an alternate number. Thus, Pacific Bell, for instance, does not assign the subscriber's basic telephone number to a Pacific Bell voice messaging mailbox, unless the end user requests service that way, and end users have the same access to competitors. If the end user chooses to use his or her home phone number with Brand X voice mail, the end user cannot also use the home phone number with Pacific Bell's voice mail, and vice versa, because the systems would have no means of distinguishing calls for delivery to the proper

locations of mailboxes. But other numbers can be used, and the treatment is the same for all. The choices are entirely the end user's.

ILECs -- Cincinnati Bell Telephone ("CBT") (p. 2) correctly asserts that "no participant in the competitive telecommunications market should be given a competitive advantage over another as a result of asymmetrical regulation." Accordingly, contrary to CBT's (p. 7) conclusion, any *Computer III and ONA* requirements that the Commission uses to implement §260 should apply to all ILECs, since all ILECs are subject to §260 and Congress made no distinctions. This application to all ILECs, large and small, reinforces that Congress did not intend that §260 be implemented with more stringent and onerous restrictions than exist under today's safeguards and that Congress intends existing restrictions to be eliminated as competition increases. Any more restrictive approach would upset Congress's intent to help bring new services to all consumers.

C. Requests For Collocation Requirements For Enhanced Service Equipment Are Misplaced; The FCC Has Rejected These Requests Repeatedly In The Proper Proceedings (¶77)

ATSI (p. 7) asserts "that safeguards must be established to ensure that ESPs like telemessagers have access to the incumbent network through interconnection and collocation and access to unbundled basic service functions...." (emphasis added) Thus, ATSI is trying to apply all of §251 to ESPs, even though §251 applies to requesting telecommunications carriers, not to information service providers or ESPs. The fallacy of this approach is demonstrated by ATSI's request for ESP collocation. VoiceTel (p.5) makes a similar mistake when it states that "if an incumbent LEC chooses to co-locate its voice messaging facilities to reduce costs of providing those facilities, it must offer to do the same for its competitors."

Requiring physical collocation of third party equipment is a taking of property which must be expressly authorized by Congress.[19] Only §251(c)(6) authorizes physical collocation, and the Commission ruled in CC Docket No. 96-98 that this section does not require physical collocation of enhanced service equipment because it is not necessary for

[19] Bell Atlantic v. FCC, 24 F.3rd 1441 (D.C. Cir. 1994).

interconnection or access to unbundled network elements.[20] This decision is consistent with the Commission's earlier decisions in both the *Computer III* and *Expanded Interconnection* proceedings that collocation of enhanced service equipment is unnecessary for interconnection and should not be required. In order to ensure nondiscriminatory interconnection, the Commission established CEI requirements, including price parity under which a collocated BOC must pay the same rates as if it were two miles from the central office. Accordingly, ATSI's and VoiceTel's positions must be rejected.

V. There Is No Need To Abandon Normal Complaint Procedures To Enforce These Sections (¶¶78-84)

A. The Burden Of Proof Should Not Shift In Any Type Of Complaint Proceeding (¶¶79, 82)

Not surprisingly, many competitors urge the Commission to adopt a policy of shifting the burden of proof onto the BOCs in complaint proceedings. As our comments and those of many others demonstrate, such a policy would be flatly illegal under the APA, and would not serve any goal of fairness, competition, or procedural expediency. We urge the Commission to abandon this proposal. To adopt it would turn the Commission's process into a "kangaroo court" and encourage frivolous and anticompetitive complaints that would be a massive burden to both the respondent carriers and the Commission itself. Such changes are clearly not in the public interest.

B. "Material Financial Harm" Must be Quantifiable (¶83)

AICC (p. 31) asks the Commission to assume that any allegation of discrimination or denial of a necessary service constitutes "material financial harm" for the purposes of §275(c).[21] If this reading were adopted, the requirement for showing material financial harm in order to benefit from expedited processing would be eliminated from the statute. It is impossible

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[20] §251 Order, ¶581.

[21] Although we are not currently involved in alarm monitoring services, we note that this argument, if adopted, could be applied to telemessaging services under §260, which has similar statutory language.

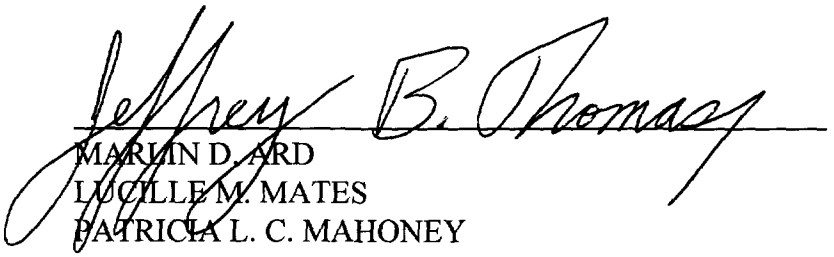
to imagine any complaint that would not need to be expedited under AICC's interpretation. Yet Congress certainly intended to provide a form of "triage" of complaints, so that those of the most financial significance would be accorded the most expeditious resolution. AICC claims that prospective harm is "virtually impossible to quantify." We strongly disagree. The law is called upon thousands of times each day to quantify prospective economic results, in everything from personal injury cases to condemnation proceedings to antitrust allegations to ratemaking. Future harm can be, and often is, quantified by economic evidence. If the economic harm cannot be so quantified and indeed is purely speculative, the case does not warrant or require expedited treatment. We urge the Commission to require credible evidence in the form of affidavits to support any claim of material financial harm so that it can evaluate the merit of the claim and the appropriateness of extending expedited procedures.

VI. Conclusion

We urge the Commission to reject the unfounded requests of certain competitors that appear intended to shackle the LECs with unneeded regulations for competitive markets that now exist for telemessaging, electronic publishing, and alarm monitoring. The public interest will best be served by adopting the perspective we have urged in this reply and in our opening comments -- enforcing the plain language of the Act, while giving the BOCs the needed flexibility to be effective competitors in these markets.

Respectfully submitted,

PACIFIC TELESIS GROUP



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